Criminal Appeal No.345-DBA of 2007.

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

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Date of Decision: November 14, 2007.

State of Haryana **...**Appellant

VERSUS

Baldev Raj alias Dena **...**Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr.S.S. Goripuria, Deputy Advocate General, Haryana.

Mr. Ashok Khumbar, Advocate, for the respondent.

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MOHINDER PAL, J.

A per facts of this case, complainant Prem Chand (P.W.8) resident of Village Rampur Kamboyana, lodged a

complaint (Exhibit P.B.) on March 23,2004, with the police of Police Station Buria, District Yamuna Nagar, wherein it was stated that he had two daughters and one son and his wife had died. On March 20, 2004, he father Balak Ram, along with his daughter Urmila Devi, aged 9/10 years (deceased) and younger son Kuldeep had gone to Village Fatehgarh to attend marriage of Brijpal, the son of his aunt (mother's sister). On March 23, 2004, one of his relatives Puran Chand informed him on telephone that Urmila was missing from the village. He along with his mother reached Village Fatehgarh and enquired about Urmila from Sukh Ram, his `Masad' (mother's sister's husband). Sukh Ram told that Urmila was missing since the intervening night of 21st/22nd March, 2004 and her whereabouts could not be traced despite search and that the matter had already been reported to Police Station Buria. During the day, complainant came to know that son-in-law of Sukh Ram, namely, Baldev Raj (accused-respondent), who had also attended the marriage, was also missing and that Sewa Ram (P.W.10) had seen the accused with Urmila on that night i.e intervening night of 21st/22nd March, 2004 outside his `Kotha' meant for tethering cattle. Complainant suspected that his daughter had been kidnapped by Baldev Raj (accused-respondent). Thereafter, on the basis of statement (Exhibit P.B) of complainant Prem Chand (P.W.8) dated March 25, 2004, this case was registered.

2. After completion of investigation, challan was presented

against the accused-respondent in Court.

3. Vide charge sheet dated September 14, 2004, the learned Sessions Judge, Yamunanagar at Jagadhri, framed charges against the accused-respondent under Sections 363, 366-A, 376, 302 and 201 of the Indian Penal Code (hereinafter referred to as `the Code'). The accused did not plead guilty to the charge and claimed trial.

4. To substantiate its allegations against the accused, the prosecution examined Sanjeev Kumar, Constable (P.W.1), Mulakh Raj, Constable (P.W.2), Sham Sunder Kohli (P.W.3), Dharam Singh, Head Constable (P.W.4), Ajay Kumar, Constable (P.W.5), Dal Singh, Head constable (P.W.6), Tarsem Singh, Constable (P.W.7), Prem Chand, complainant (P.W.8), Raj Kumar (P.W.9), Sewa Ram (P.W.10), Dr. Vineet Gupta (P.W.11), Phool Chand, Assistant Sub Inspector (Dr.M.R. Passi (P.W.13), Parmod Kumar (P.W.14), Dr.P.K. Paliwal (P.W.15), Ranjit Siungh (P.W.16), Ishwar Dass, Assistant Sub Inspector (P.W.17) and Des Raj, Sub Inspector (P.W.18).

5. Thereafter, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, in which he denied the allegations levelled against him and pleaded innocence. No defence evidence was led.

6. The trial Court, on consideration of the material on record, particularly the earlier statement (Exhibit P.A) and prior enmity of Sewa Ram (P.W.10) with Sukh Ram, acquitted the accused-respondent vide judgment dated August 21, 2006. The

State of Haryana has challenged the acquittal of accused-respondent Baldev Raj by way of filing this appeal.

7. Leave to appeal was granted on April 17, 2007.

8. We have heard the learned counsel for the parties and have gone through the records of the case.

9. While arguing before us, learned counsel for the State has contended that Sewa Ram (P.W.1), the witness of last seen, has fully supported the prosecution case. This witness had seen the accused in the company of the deceased on the night intervening 21st/22nd March, 2004, but the trial Court ignored his evidence, which was further corroborated from the medical evidence in the form of Dr. P.K. Paliwal (P.W.15), who had concluded that sexual intercourse had been positively committed on the deceased. Further, referring to the evidence of some witnesses regarding recoveries on the basis of disclosure statements made by the accused, it has been argued that the accused should have been convicted and sentenced accordingly.

10. On the other hand, learned counsel for the accused-respondent has reiterated the aruments raised in the trial Court and contended that in view of the enmity between Sukh Ram and Sewa Ram (P.W.10), the accused has been rightly acquitted by the trial Court after giving him the benefit of doubt.

11, We have given our thoughtful consideration to the arguments. We would first like to deal with the medical evidence in the form of Dr.P.K. Paliwal (P.W.15), who conducted the post

mortem examination on the dead body of Urmila Devi on March 28, 2004. As per opinion of the Doctor, there were multiple torn effects at the vaginal region at 5 & 7 O'clock position. Infiltration of blood was appreciated. Vaginal swab and vaginal smear were taken for detection of spermatozoa. According to the Doctor, the cause of death in this case could not be ascertained because the viscera was sent for chemical examination. The duration between death and post mortem examination was about one to two weeks. The doctor gave the opinion that intercourse upon the deceased was positively committed.

12. Admittedly, there is no eye-witness, who had seen accused Baldev Raj kidnapping Urmila, committing rape or her murder. The case has to rest on the circumstantial evidence to form a chain of events and to connect the accused with the crime. All incriminating facts and circumstances have to be scrutinise carefully in order to reach the final conclusion of kidnapping, rape or murder. The main circumstances required to be scrutinised by this Court are that on the night intervening 21st/22nd March, 2004, Sewa Ram saw the accused running after lifting the girl from his cattle shed. The dead body of Urmila had been found near the river on March 27, 2004.

13. To reach to final conclusion, evidence of the material witnesses is required to be re-examined in this case. The first person who comes in the list is complainant Prem Chand (P.W.8), father of the deceased. He has stated that his daughter Urmila was

found missing on the intervening night of 21st/22nd March, 2004 and he reported the matter to the police, on the basis of which Daily Diary Report Exhibit P.A was recorded. On March 25, 2004, he got a case registered against unknown persons as he had suspicion against many persons in the village. It has been specifically stated that the accused neither kidnapped nor murdered his daughter. He further denied the fact regarding his statement having been recorded in Exhibits P.B, P.J or P.K. He also denied his presence at the time of preparation of documents Exhibits P.D and P.E i.e disclosure statements of the accused and memos of demarcation Exhibit P.F and P.G or the places from where the police made discoveries. Before parting with this evidence, it will be necessary to highlight that apart from Exhibit P.A, this witness got recorded another statement Exhibit P.B and both these statements are discrepant with each other. We will deal with these statements in the later part of this judgment.

14. The next witness is Raj Kumar (P.W.9), who has not supported the case of the prosecution and has stated that the accused was not involved in the murder or kidnapping of Urmila as the accused remained present in the Village with him on the night intervening 21st/22nd March, 2004.

15. Then comes the material witness of the prosecution Sewa Ram (P.W.10), who stated that on March 21, 2004, he attended the marriage and returned in the evening on March 21,2004. On the intervening night of 21st/22nd March, 2004, he

suddenly woke up on hearing noise of his cow and went to his cattle shed where he saw shirt of a person and made a call by abusing. On asking, the person told his name as Baldev Raj and said that he was busy with his wife. Thereafter, Sewa Ram noticed that Baldev Raj ran away after lifting the girl. None chased him though some persons had collected at that place. He has further stated that on the next day morning, parents and relatives of Urmila enquired from the accused regarding the name of the girl in whose company he was seen the previous night. However, he replied that the girl was different than Urmila and that he could produce the same. However, as per this witness, the girl was never produced. Rather, Baldev Raj ran away from the village. Finally, it has been stated that the accused was arrested 15/16 days after the occurrent.

16. The trial Court has also discussed the evidence of the remaining witnesses of the prosecution, which is of little importance as they were allegedly with the police at the time of making of disclosure statements by the accused and at the time when the accused took the police to the places where Urmila was allegedly raped or murdered.

17. From the facts brought on record, it is clear that the statement of complainant Prem Chand had been recorded twice in the Police Station. His first statement (Exhibit P.A) was recorded on March 23, 2004. A close perusal of this statement shows that Sewa Ram (P.W.10) and one Prithvi Ram had also accompanied the

complainant to the Police Station. The complainant did not disclose in his statement to the police on that day that the accused was also missing since the night intervening 21st/22nd March, 2004. Rather, it has been got recorded by the complainant that his daughter was in the house uptil 10 – 12 A.M on March 22, 2004 as some ladies were showing the dowry articles to the villagers. Urmila got missing after 12 noon on March 22, 2004, when the complainant wanted to return back to his village after the completion of marriage ceremonies. If we see both the statements, Exhibits P.A and P.B, the police seems to have changed the entire version of the case. As per first version, the complainant along with his daughter and son had come to Village Fatehgarh to attend the marriage ceremony of Brijpal, son of Sukh Ram. The `Baraat' was to go to some other place and the complainant accompanied the `Baraat' on March 21, 2004. The `Baraat' returned back to Fatehgarh in the evening and the complainant and his children including Urmila were there in the house of Sukh Ram during the intervening night of 21st/22nd March, 2004. However, disappearance of Urmila was noticed at about 12 noon on March 22, 2004 and thereafter the search started and finally the matter had been reported to the police on March 23,2004 and statement Exhibit P.A had been recorded. As the complainant had been suspecting Sewa Ram (P.W.10), this witness was taken into custody by the police and remained there for 4/5 days. This is the time from where concoction starts and

the police changes the version and brought a story of disappearance of Urmila on the intervening night of 21st/22nd March, 2004. We are unable to understand as to why the fact regarding disappearance of Urmila had not been reported to the police in the statement Exhibit P.A when Sewa Ram (P.W.10) was also accompanying the complainant to the Police Station. Otherwise also, the complainant has disclosed in his statement that his daughter Urmila was mentally retarded and it is quite possible that she herself of her own had left the house. Thus, the version contained in Exhibit P.A and Exhibit P. B, on the basis of which the First Information Report in the case was recorded, is entirely different.

18. While going through the evidence, the entire fact has come to light i.e the enmity between Sewa Ram and Sukh Ram, complainant's sister's husband and father-in-law of the accused. Sewa Ram in his cross-examination has admitted that he got registered a case against Sukh Ram regarding inflicting injuries on the person of his wife. This further indicates that there had been dispute between Sewa Ram and father-in-law of the accused, which could be a motive to falsely implicate the son-in-law of Sukh Ram.Further more, Sewa Ram (P.W.10) has himself stated in his examination-in-chief that on the very next day an enquiry was made from the accused regarding the girl in whose company he was found the previous night, which further goes to show that the accused was present in the house on the next day after the occurrence. So far the other witnesses i.e Prem Chand (P.W.8)

and Raj Kumar (P.W.9) are concerned, they have not supported the case of the prosecution. In the absence of any cogent evidence to complete the chain in order to prove the guilt of the accused, the accused has been rightly acquitted by the trial Court giving him the benefit of doubt.

19. Consequently, we do not find any merit in this appeal and dismiss the same.

(ASHUTOSH MOHUNTA)
JUDGE

(MOHINDER PAL)
JUDGE

November 14, 2007.
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